

**BEFORE THE FLORIDA  
JUDICIAL QUALIFICATIONS COMMISSION**

**INQUIRY CONCERNING A  
JUDGE, NO. 01-244**

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**CASE NO.: SC01-2670**

**EMERGENCY MOTION FOR PROTECTIVE ORDER**

**COMES NOW**, the Respondent, by and through undersigned counsel and pursuant to *Florida Rule of Civil Procedure* 1.280(c) and *Rule* 1.330(a)(3), requests this Honorable Court to insure justice and to prevent an oppressive denial of due process to issue a protective order prohibiting the Special Counsel from conducting a videotaped deposition of Nina Jeanes and Lisa Jeanes in lieu of live testimony as cross noticed and as grounds therefore would state as good cause the following:

1. The investigative panel of the JQC issued formal charges against the Respondent without taking any sworn testimony whatsoever and without even interviewing principal witness Lisa Jeanes.
2. The Respondent noticed the videotaped discovery depositions of Nina and Lisa Jeanes to occur in Rockville, Maryland, on January 22 and 23, 2002, respectively.
3. Prior to noticing those discovery depositions, counsel for the respondent secured the agreement of the Special

Counsel that he would cooperate in the taking of such depositions by the Respondent at the time and place to be noticed.

4. On December 27, 2001, Special Counsel advised the undersigned that it was his intention to cross notice Special Counsel's own deposition of Lisa Jeanes and her mother Nina Jeanes at the same time and place already noticed by Respondent, and to utilize such cross noticed depositions in lieu of live testimony at the final hearing on this matter, so that the witnesses would not have to appear at the final hearing in this matter.

5. Upon hearing this announcement, the undersigned objected on the grounds that the videotaped depositions had already been noticed by Respondent as agreed by the parties at the times and places now sought by Special Counsel, that a contemporaneous deposition by Special Counsel for the JQC for use at trial impermissibly conflicted with the Respondents already noticed discovery depositions, and effectively deprived Respondent of discovery and his Sixth Amendment right of confrontation and Fifth Amendment right of due process. The undersigned advised Special Counsel that it was unfair for the JQC to propose depositions perpetuating their testimony for final

hearing in lieu of effective and necessary discovery by the Respondent.

6. He stated, *inter alia*, that it was unfair to have the witness Lisa Jeanes appear in person before the hearing panel for the reason that she was being required to travel to California to testify at the criminal trial of the Respondent, currently scheduled for February 25, 2002.

7. In the referenced conversation of December 27, 2001, Special Counsel confirmed that he advised Lisa Jeanes that he would do “everything possible to ensure that she would not have to appear and testify.” Given the fact that the witness is voluntarily traveling to California from her Maryland home to testify at the criminal trial of Respondent, no apparent impediment exists to her similar cooperation with the JQC; and Special Counsel’s promise to her appears to be an effort to secure her nonattendance. Respondent intends to utilize the time set aside and noticed for his discovery deposition of Lisa Jeanes and also the witness Nina Vann Jeanes. It is anticipated that during those depositions the Respondent will discover information which will lead to relevant evidence concerning the issues before this panel. Absent

obtaining such information during the scheduled discovery depositions by the Respondent, and the subsequent opportunity to pursue those leads, the Respondent would not, and indeed could not, be in a position to cross examine the witnesses in a manner contemplated by law at a final hearing. In addition, Special Counsel is well aware that he has provided the names of three additional witnesses in California who cannot be deposed by Respondent until after the currently scheduled depositions.

8. The procedure announced to the undersigned on December 27, 2001, was confirmed by the January 3, 2002, filing of the attached cross notices of videotaped depositions of Nina Vann Jeanes and Lisa Jeanes for the identical times and places already noticed by the Respondent.<sup>1</sup> Moreover, such notices specifically asserted that the depositions were being taken “for discovery, for use at trial or both.” The witnesses have already been interviewed by either the Special Counsel or an investigator for the JQC and are clearly witnesses for the JQC. Discovery accordingly is not a legitimate goal of such depositions as announced by the Special Counsel. Rather the only purpose for

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<sup>1</sup> The January 12, 2002, date set out in the notice was a typographical error.

the deposition is to effectively ambush the Respondent by perpetuating testimony for final hearing without effective cross examination.

9. The protective order as requested herein must be granted to the Respondent so that the Respondent and the Commission will have the benefit of contemporaneous rulings from the bench on evidentiary matters that arise during the testimony at the final hearing. It is anticipated that the contemporaneous rulings on evidentiary matters will be critical for justice as evidenced by the broad language of the complaint.

10. Justice requires and the rules support the practice of the Commission and the Chair asking questions of the witnesses at trial. A video deposition in lieu of live testimony denies the Chair and the Commission the benefit of such contemporaneous questions.

11. The contemporaneous observations of demeanor, attitude, and other nonverbal communications and appearances are essential to the triers of fact. It is for this reason that courts have routinely held that absent a compelling state interest “the Confrontation Clause guarantees the defendant a face to face

meeting with witnesses appearing before the trier of fact.” *Coy v. Iowa*, 487 U.S. 1012, 1016, 108 S.Ct. 2798, 2801. *See also Maryland v. Craig*, 110 S.Ct. 3157 (1990); *Pennsylvania v. Ritchie*, 480 U.S. 39, 51, 107 S.Ct. 989, 998, 94 L.Ed.2d 40 (1987) (plurality opinion); *California v. Green*, 399 U.S. 149, 157, 90 S.Ct. 1930, 1934, 26 L.Ed. 489 (1970); *Snyder v. Massachusetts*, 291 U.S. 97, 106, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934); *Dowdell v. United States*, 221 U.S. 325, 330, 31 S.Ct. 590, 592, 55 L.Ed. 753 (1911); *Kirby v. United States*, 174 U.S. 47, 55, 19 S.Ct. 574, 577, 43 L.Ed. 890 (1899); *Mattox v. United States*, 156 U.S. 237, 244, 15 S.Ct. 337, 340, 39 L.Ed. 409 (1895); *Ritchie v. State*, 720 So2d 261 (Fla 1<sup>st</sup> DCA 1998). The Commission and Chair would be denied such observations on questions from members of the Commission and the opportunity to consider in context and rule upon any erroneous objections and instructions from opposing counsel.

12. Finally, the Rule permitting video depositions in lieu of live testimony predates the now available reliable technology which facilitates the live real time testimony from remote locations. This technology is now available in the courthouse in Pinellas

County, Florida, should the Commission agree that the hearing be held in the county where the Judge resides as he has requested under separate motion. Real time testimony allows the Commission the benefit of seeing the witness at trial as if the witness was contemporaneously in the courtroom. All prejudice of travel and time to the witness are minimized and all objections of the moving party are minimized. The Office of Court Administration within Pinellas County, Florida, has installed, demonstrated and promoted such technology for this and other purposes.

13. The prejudice to the moving party far outweighs the benefit to the Commission and justice requires an order issue preventing the Special Counsel for the Commission from taking the noticed depositions in lieu of live testimony.

14. Respondent requests a hearing on this motion.

**WHEREFORE,** Respondent respectfully requests that the panel enter a protective order whereby the Special Counsel is directed to refrain from his planned course of conduct with respect to the cross noticed depositions of Nina and Lisa Jeanes which conflict with the discovery depositions already noticed by the Respondent, and is further directed to at a minimum delay the taking of videotaped

depositions to perpetuate hearing testimony until such time as Respondent has completed discovery, or alternatively require Special Counsel utilize available videoconferencing facilities in order to permit real time testimony at the final hearing.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to: **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3<sup>rd</sup> District Court of Appeal, 2001 S.W. 117<sup>th</sup> Avenue, Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; **John S. Mills, Esq.**, Special Counsel, Foley & Laudner, 200 Laura



Street, Jacksonville, Florida 32201-0240; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602, **Louis Kwall, Esq.**, Co-Counsel for Respondent, 133 North Ft. Harrison Avenue, Clearwater, Florida 33755; this 16<sup>th</sup> day of January, 2002.

**ROBERT W. MERKLE, ESQ.**